

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:17CR55
(Judge Keeley)

ERIC MALCOMB,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE (DKT. NO. 12),
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On October 13, 2017, the defendant, Eric Malcomb ("Malcomb"), appeared before United States Magistrate Judge Michael J. Alois and moved for permission to enter a plea of GUILTY to Count One of the Information. After Malcomb stated that he understood that the magistrate judge is not a United States district judge, he consented to tendering his plea before the magistrate judge. Previously, this Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Malcomb's statements during the plea hearing and the government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Malcomb was competent to enter a plea, that the plea was freely and

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voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On October 13, 2017, the magistrate judge entered a Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 12) finding a factual basis for the plea and recommending that this Court accept Malcomb's plea of guilty to Count One of the Information.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. The parties did not file any objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Malcomb's guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in Count One of the Information.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence report prepared in this matter.

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Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

1. The Probation Officer shall undertake a presentence investigation of Malcomb, and prepare a presentence report for the Court;
2. The Government and Malcomb shall provide their versions of the offense to the probation officer by **November 3, 2017**;
3. The presentence report shall be disclosed to Malcomb, defense counsel, and the United States on or before **January 3, 2018**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);
4. Counsel may file written objections to the presentence report on or before **January 17, 2018**;
5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **January 31, 2018**; and
6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the

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factual basis from the statements or motions, on or before **February 7, 2018.**

The magistrate judge released Malcomb to bond on the terms established in the Order Setting Conditions of Release (dkt. no. 12).

The Court will conduct the sentencing hearing for the defendant on **Wednesday, February 21, 2018 at 11:30 A.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so ORDERED.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: October 27, 2017

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE